

KENTUCKY AUCTIONEER LAW -- KRS CHAPTER 330

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330.010 Title.

KRS 330.010 to 330.200 shall be known and may be cited as the Auctioneers License Law of 1962.

History: Created 1962 Ky. Acts ch. 251, sec. 1.

330.020 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

- (1) "Apprentice auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (2);
- (2) "Auctioneer" or "principal auctioneer" means any person who offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction, or who sells the same at auction and who is allowed to supervise one (1) or more apprentice auctioneers;
- (3) "Board" means the Board of Auctioneers;
- (4) "Goods" means any chattels, goods, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;
- (5) "Persons" includes individuals, associations, partnerships, and corporations, and the word "persons" shall also include the officers, directors, and employees of a corporation;
- (6) "Auction house" means any commercial establishment at which goods are regularly or customarily offered for sale or sold at public auction, or at which goods are customarily or regularly deposited and accepted, on consignment or otherwise, for sale at public auction at a fixed location, except those establishments which limit goods sold to thoroughbred horses or any interests therein, including, but not limited to, shares and seasons, or tobacco and certified fixed-base livestock markets;
- (7) "Auction house operator" means the individual principally or ultimately responsible for the operation of an auction house, or in whose principal interest the establishment is operated;
- (8) "Livestock auctioneer" means any auctioneer whose professional activities are limited to the sale of livestock at fixed based livestock yards operating under the control and guidance of the United States of America pursuant to the Federal Packers and Stockyards Act; and
- (9) "Tobacco auctioneer" means any auctioneer whose professional activities are limited to the sale of tobacco at fixed based tobacco warehouses operating under the control and guidance of the United States of America through its Department of Agriculture.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 1, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 1, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 1, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 80, sec. 1, effective June 17, 1978. -- Created 1962 Ky. Acts ch. 251, sec. 2.

330.030 Auctioneers license required.

On and after July 1, 1962, it shall be unlawful for any person to act as an auctioneer or apprentice auctioneer, or to advertise or to assume to act as either within the Commonwealth without a license issued by the Board of Auctioneers.

History: Created 1962 Ky. Acts ch. 251, sec. 3.

330.033 Limited licenses for livestock and tobacco auctioneers.

- (1) Beginning July 1, 1993, the Board of Auctioneers shall have the option, at its discretion, of issuing a limited license to livestock auctioneers, in lieu of an auctioneer license. An applicant for a limited license shall be subject to all of the provisions of this chapter and shall apply for and renew his license as auctioneers do, and shall pay the same fees. Applicants, if licensed by the Board of Auctioneers, shall strictly limit professional activities to those of a livestock auctioneer.
- (2) Beginning July 1, 1993, the Board of Auctioneers shall have the option, at its discretion, of issuing a limited license to tobacco auctioneers, in lieu of an auctioneer license. An applicant for a limited license shall be subject to all the provisions of this chapter, and shall apply for and renew his license as auctioneers do, and shall pay the same fees. Applicants, if licensed by the board, shall strictly limit professional activities to those of a tobacco auctioneer.

Effective: July 14, 1992 History: Created 1992 Ky. Acts ch. 344, sec. 3, effective July 14, 1992.

330.035 License required to act as auction house operator.

- (1) It shall be unlawful for any person to act as an auction house operator, or to assume to act as one within the Commonwealth, without a license issued by the board.

- (2) An auction house operator may be, but is not required to be, a licensed auctioneer or apprentice auctioneer, unless he acts as one. If licensed as an auctioneer, no additional license shall be required of him.
- (3) If an auction house operator conducts and operates more than one (1) auction house, only one (1) auction house operator license shall be required of him, but the appropriate license issuance fee, the appropriate license renewal fee, and recovery fund fee shall be imposed for each location.

Effective: July 14, 1992 History: Amended 1992 Ky. Acts ch. 344, sec. 2, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 170, sec. 2, effective July 13, 1990.

330.040 Exceptions to KRS 330.030.

- (1) KRS 330.030 shall not apply to: (a) Sales at auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree, or to any sale required by law to be at auction. (b) Sales at auction of any real or personal property conducted exclusively by an individual who personally owns such real or personal property and who did not acquire such real or personal property for resale. This subsection is applicable only to individuals. It does not apply to any other "persons" as defined in KRS 330.020(5), nor does it apply to any officer, director or employee thereof. (c) Any resident or nonresident crier or auctioneer who simply calls for bids and strikes the bargain or who cries or acts as auctioneer in the sale of livestock owned and sold at auction by 4-H Clubs or FFA Clubs or club members, or by any university operated by the Commonwealth of Kentucky. (d) A sale conducted by or on behalf of any political party, church or charitable corporation or association if the individual conducting the sale receives no compensation and does not, by advertising or otherwise, hold himself out as being available to engage in the sale of goods or real estate at auction.
- (2) Notwithstanding the provisions of this section, no licensee under this chapter shall be exempted from any of the provisions of this chapter in connection with or by reason of his participation in any sale excepted under this section.

Effective: July 13, 1984 History: Amended 1984 Ky. Acts ch. 407, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 80, sec. 2, effective June 17, 1978. -- Amended 1964 Ky. Acts ch. 112, sec. 1.--Created 1962 Ky. Acts ch. 251, sec. 4.

330.050 Board of Auctioneers -- Membership -- Qualifications -- Terms -- Compensation -- Powers - Employees -- Funds -- Publication of list of licensees -- Administrative regulations.

- (1) There is hereby created a Board of Auctioneers. The Governor shall appoint a board consisting of five (5) members, all of whom immediately prior to the date of their appointment have been residents of the Commonwealth of Kentucky for five (5) years, and four (4) whose vocation for a period of at least five (5) years has been that of an auctioneer. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The term of the members of the board shall be for three (3) years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term.
- (2) At no time shall there be more than three (3) members of the same political faith on the board. Whenever there is a vacancy on the board, the Kentucky Auctioneer Association shall recommend to the Governor at least three (3) names for each auctioneer vacancy, and such appointment or appointments shall be made from the recommendations of the association.
- (3) The board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairman.
- (4) Each member of the board shall receive the sum of twelve thousand dollars (\$12,000) per year, payable twice monthly, and reimbursement for actual and necessary expenses incurred in the performance of official duties.
- (5) The board shall have full authority to employ, and discharge, any personnel, including counsel, as it may deem necessary to efficiently administer and enforce the provisions of this chapter, and it shall outline the duties and fix the compensation of such persons, provided that compensation shall be comparable to the salaries paid other state employees, if any, which the board may deem to be doing similar work. The board shall obtain office space, furniture, stationery, and any other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter. If any items deemed to be reasonably necessary by or which are required by the board are available through vendors under contract with the Commonwealth of Kentucky at less cost than if obtained otherwise, then the items shall be acquired pursuant to the contract. The board shall have full authority to obtain for its members, staff, and employees complete insurance coverage, including, but not limited to, liability and errors and omissions insurance, so long as such insurance concerns the business of the board.
- (6) All fees and charges collected by the board under the provisions of this chapter shall be paid into the State Treasury through the Finance and Administration Cabinet and shall be credited to an agency fund account for the Board of Auctioneers under the provisions of KRS 45.253 and shall be withdrawn or expended as provided in that section, if such payment, credit, withdrawal, or expense

provisions do not conflict with any provision of this chapter. The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, fines, penalties, and other income imposed under the provisions of this chapter and paid into the state treasury. The board shall be financially self-sustaining, and if funds permit it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of all licensees who have paid fees pursuant to this chapter.

- (7) The board shall annually publish a list of the names and addresses of all auctioneers, apprentice auctioneers, livestock auctioneers, tobacco auctioneers, and auction house operators licensed by it pursuant to this chapter. This list shall also contain the names of all persons whose licenses have been suspended or revoked within the preceding year, as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.
- (8) The board may from time to time promulgate necessary administrative regulations.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 2, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 4, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 3, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 2, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 2, effective July 15, 1982; and ch. 450, sec. 76, effective July 1, 1983. -- Amended 1978 Ky. Acts ch. 80, sec. 3, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 206, sec. 25. -- Amended 1974 Ky. Acts ch. 74, Art. II, sec. 9(1). -- Created 1962 Ky. Acts ch. 251, sec. 5.

330.060 Issuance of license -- Conditions -- Examination, fee, exception.

- (1) Any licenses issued pursuant to this chapter shall be granted only to persons who are found to be of good repute, trustworthy, and competent to transact the business for which the license was granted in such a manner as to safeguard the interest of the public.
- (2) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.
- (3) In addition to proof of honesty, truthfulness, and good reputation, an examination, conducted by the board or its authorized representative shall be held four (4) times each year, and an examination fee of seventy-five dollars (\$75) shall be collected from each applicant for apprentice auctioneer and an examination fee of one hundred dollars (\$100) shall be collected from each applicant for auctioneer and from each applicant for livestock auctioneer, tobacco auctioneer, and auction house operator. Examination fees shall be nonrefundable and shall defray the expenses of processing the application and of conducting the examination. The examinations for auctioneer and apprentice auctioneer shall include questions on ethics, reading, writing, spelling, mathematics, elementary principles of land economics, and a general knowledge of the statutes of Kentucky relating to deeds, mortgages, contracts of sale, agency, leases, auctions, brokerage, and the provisions of this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The examination for auction house operator license shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking to operate auction houses. The examinations for livestock auctioneer and tobacco auctioneer shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking a professional license to operate in those limited fields.
- (4) However, no examination shall be required for the renewal of any present or future license, unless such license has been revoked, suspended, or is allowed to expire without renewal. In any of these cases, the board may, in its discretion, require the applicant to take and pass the written examination before a new license may be issued.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 3, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 5, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 4, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 3, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 3, effective July 15, 1983. -- Created 1962 Ky. Acts ch. 151, sec. 6.

330.070 Qualifications -- License fee -- Continuing education requirement -- License and pocket card -- Duty of auctioneer upon termination of apprentice employment -- Placement of licenses in escrow.

- (1) In addition to the other qualifications provided for by this chapter, every applicant for any license issued by the board shall be at least eighteen (18) years of age and hold a high school diploma or equivalent. In addition, but subject to the provisions of KRS 330.090, an applicant for an auctioneer's license shall possess a current Kentucky apprentice auctioneer's license and shall have served a bona fide apprenticeship for a period of two (2) years as an apprentice auctioneer in Kentucky, provided that any applicant for auctioneer's license whose apprentice license was granted prior to August 1, 1992, shall be required to serve an apprenticeship of but one (1) year. An applicant for an auctioneer's license who has previously held an auctioneer's license which has been revoked, suspended, or which has expired without renewal may request, and the board may grant, a waiver of the requirement of possession of a current apprentice license.

- (2) Every application for a license, whether as an auctioneer, apprentice auctioneer, livestock auctioneer, tobacco auctioneer, or auction house operator, shall be submitted on forms prepared by the board. Each applicant shall furnish pertinent background data as outlined on those forms.
- (3) The issuance fee for each license issued pursuant to this chapter shall be not more than one hundred dollars (\$100) and the annual renewal fee for each license shall be not more than one hundred dollars (\$100). All licenses shall expire on June thirtieth of each year. In the absence of any reason or condition which might warrant the refusal of the renewing of the license, and upon timely receipt of the written request of the applicant and the annual fee therefor, the board shall issue a new license for each ensuing year.
- (4) Beginning with the renewal of licenses expiring on or after June 30, 1993, the board may require as a condition precedent to the renewal of any license, that all licensees complete continuing auction education up to ten (10) hours per year per licensee. The board may impose different continuing auction education requirements, or none, upon different classifications of licensees under this chapter. The continuing auction education requirements provided for in this subsection shall not apply to those individual auctioneers licensed prior to January 1, 1980.
- (5) The board shall prepare and deliver to each licensee a license and pocket card. The license and pocket card of the apprentice auctioneer shall contain the name and address of his or her principal auctioneer. (a) Auction house operators shall display their licenses conspicuously and at all times in their place of business. All other licenses shall be kept on file in the licensee's place of business. (b) All licensees shall carry their pocket cards with them when performing auctioneering tasks, to be shown upon request. (c) Lost licenses or pocket cards will each be replaced upon request by the licensee and payment of a replacement fee of fifteen dollars (\$15).
- (6) When any apprentice auctioneer is discharged or terminates employment with the auctioneer for any reason, it shall be the immediate duty of the principal auctioneer to deliver or mail by certified mail, return receipt requested, to the board the license of the apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter either directly or indirectly, under authority of his or her license, until the apprentice auctioneer receives a new license bearing a new principal auctioneer's name and address. No more than one (1) license shall be issued to any apprentice auctioneer for the same period of time.
- (7) A licensee may place his or her license in escrow with the board if the licensee does not engage in any auctioneering activity or auction house operations and continues to pay the annual renewal fees during the term of escrow. (a) For each year the license is in escrow, a licensee shall be exempt from the contribution to the auctioneer's education, research, and recovery fund described in KRS 330.192(1)(b) and the continuing education requirement described in subsection (4) of this section. (b) To reactivate a license in escrow, the licensee must meet the current year's continuing education requirement described in subsection (4) of this section and pay a reactivation fee of one hundred dollars (\$100).
- (8) Notice in writing shall be given to the board by each licensee of any change of principal business location or of residence address within ten (10) days of such change. In the event of change of business location address, the board shall issue a new license for the unexpired period. A change of business location without notification to the board within ten (10) days shall automatically suspend or revoke the license of such licensee, as may be ordered in the discretion of the board. Changing a business location or a residence location on its records shall entitle the board to collect ten dollars (\$10).

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 4, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 6, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 5, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 4, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 4, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 80, sec. 4, effective June 17, 1978. -- Amended 1974 Ky. Acts ch. 315, sec. 68. -- Amended 1970 Ky. Acts ch. 120, sec. 18. -- Created 1962 Ky. Acts ch. 251, sec. 7.

330.090 Nonresident licensee -- Fees -- Consent to be sued -- Waiver of apprenticeship requirement.

- (1) A nonresident may become a licensee by conforming to all the conditions of this chapter.
- (2) In every instance the nonresident shall pay the issuance fee and the annual renewal fee by this chapter. The nonresident shall also pay the annual fee to the education, research, and recovery fund pursuant to KRS 330.192 and, in addition, any fee required by KRS 330.095, whether or not the examination requirement is waived by the board pursuant to this chapter.
- (3) In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the Commonwealth, by the service of any summons, process, or pleadings authorized by law on the secretary of the board. The consent shall stipulate and agree that the service of such process, summons, or pleadings on the secretary shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Kentucky. In case any summons, process, or pleadings are served upon

the secretary of the board, it shall be by duplicate copies, one of which shall be retained in the office of the board, and the other immediately forwarded by certified mail, return receipt requested, to the last known business address of the applicant against which the summons, process, or pleadings may be directed.

- (4) In the event a nonresident applicant for an auctioneer's license resides in a state which does not prescribe qualifications for licensing as set out in KRS 330.095, the board may waive the apprenticeship requirement set out in KRS 330.070(1) if the nonresident nonreciprocal applicant: (a) Resides so far away as to preclude serving a bona fide apprenticeship under a licensed Kentucky auctioneer; and (b) Demonstrates to the board by affidavit or by other evidence as required by it that his or her experience and competency meet the qualifications to take the examination for auctioneer.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 5, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 7, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 6, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 79, sec. 6, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 114, sec. 91, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 315, sec. 69. -- Amended 1972 Ky. Acts ch. 42, sec. 2. -- Amended 1968 Ky. Acts ch. 67, sec. 1. -- Created 1962 Ky. Acts ch. 251, sec. 9.

330.095 Reciprocal licensing without examination.

Any nonresident applicant who is a licensee in and who resides in another state or country where the qualifications prescribed at the time of licensing were, in the opinion of the board, equal to those prescribed in the Commonwealth of Kentucky at the date of application, and where reciprocal licensing privileges satisfactory to the board are granted to licensees and residents of the Commonwealth, may be granted a license without an examination. In addition to the fees set out in KRS 330.090, a reciprocal licensee fee shall be collected from each applicant meeting the above requirements. The fee shall be the amount of the fee charged by the applicant's state or country to a Kentucky resident applying for a reciprocal license or one hundred dollars (\$100), whichever is greater.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 6, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 8, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 7, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 5, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 79, sec. 7, effective July 15, 1982. -- Created 1972 Ky. Acts ch. 42, sec. 1.

330.100 Place of business -- Sign to be erected, requirements, exception -- Application to livestock and tobacco auctioneers.

- (1) Every auctioneer licensed under this chapter shall maintain a definite place of business in the Commonwealth, except as hereinafter provided, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to the principal office and all branch offices. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall clearly show his name and indicate that he is an auctioneer. The sign shall be placed so that it can easily be observed and read by anyone entering the place of business; provided, however, that if the auctioneer is a nonresident, it is not necessary for him to maintain an active place of business in the Commonwealth if he maintains a place of business in the state where he was originally licensed.
- (2) Every auction house operator licensed under this chapter shall maintain a definite place of business in the Commonwealth, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to all fixed locations. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall contain the name of the auction house operator, the fact that he is licensed, and the name of the auction house, if different than the name of the operator. The sign shall be placed so that it can easily be observed and read by anyone entering the auction house.
- (3) Every livestock auctioneer and tobacco auctioneer licensed under this chapter shall conform to the provisions of subsection (1) of this section. If the livestock auctioneer or tobacco auctioneer does not wish to maintain a separate and definite place of business, he may use one (1) of the fixed base locations where he is operating as such place of business. The board shall be kept advised as to the location pursuant to KRS 330.070.

Effective: July 14, 1992 History: Amended 1992 Ky. Acts ch. 344, sec. 9, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 8, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 10.

330.110 License suspension, revocation, and other penalties -- Grounds.

The board may suspend for a period up to four (4) years or revoke the license of any licensee, or levy fines not to exceed five hundred dollars (\$500) against any licensee, or place any licensee on probation for a period of up to three (3) years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Making any substantial misrepresentation;

- (3) Pursuing a continued and flagrant course of misrepresentation or intentionally making false promises or disseminating misleading information through agents or advertising or otherwise;
- (4) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his or her principal auctioneer;
- (5) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own, or failing to keep such funds of others in an escrow or trustee account;
- (6) Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (7) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;
- (8) Violation of any administrative regulation promulgated by the board;
- (9) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by the auctioneer, apprentice auctioneer, or auction house operator;
- (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetency, or untruthfulness;
- (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (12) Failing prior to the sale at public auction or prior to publicly advertising any goods for sale or offering any goods for sale to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives the property for sale;
- (13) After January 1, 1993, failure of any licensee to insert in any advertising pertaining to a particular sale the name of the auctioneer.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 7, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 10, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 9, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 6, effective July 13, 1984. -- Created 1962 Ky. Acts ch. 251, sec. 11.

330.115 Complaints against licensee -- Answer by licensee.

- (1) All complaints against licensees must be submitted to the board in triplicate, on forms furnished by the board. The complaint must state facts which, if true, would make out a prima facie case against the licensee.
- (2) A copy of the complaint, exhibits attached thereto, and any subsequent pleadings, must be served on the licensee defendant, by the complainant, at the licensee's last known address and must show certification that there has been service by writing to the last known address.
- (3) The defendant licensee must file with the board an answer to the complaint, in triplicate, and properly notarized, on forms secured from the board offices. The answer must be returned to the board within twenty (20) days and a copy of the answer, exhibits attached thereto, as well as any subsequent pleadings, must be served on complainant and must show certification that there has been service by writing to the last known address. Any and all further pleadings in the matter filed with the board by either party must show that a copy has been furnished to the opposing party or parties.

Effective: July 13, 1984 History: Created 1984 Ky. Acts ch. 407, sec. 7, effective July 13, 1984.

330.120 Investigation of complaint -- Conditions -- Disposition hearing.

- (1) The board may upon its own motion, and shall upon the verified written complaint of any person, investigate the actions of any licensee, or auction house operator, or any person who assumes to act as a licensee if the complaint, or complaint together with other evidence presented in connection with it, makes out a prima facie case of a violation of this chapter. If a prima facie case is not established or the violation is deemed inconsequential, the board may immediately dismiss the complaint.
- (2) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 8, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 11, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 11, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 12.

330.130 Hearing before imposition of disciplinary action -- Notice -- Appeal.

- (1) Before denying an application for license or before imposing any disciplinary action authorized under KRS 330.110, the board shall set the matter down for an administrative hearing, if a hearing is requested by the applicant or licensee. The hearing shall be conducted in accordance with KRS

Chapter 13B. If the applicant or licensee who is the subject of the hearing is an apprentice auctioneer, the board shall also provide notification of the hearing to the auctioneer employing him or whose employ he is about to enter, by mailing notice by certified mail, return receipt requested to the auctioneer's last known business address.

- (2) Any party aggrieved by a final order of the board refusing to grant a license or suspending or revoking a license may appeal the final order to the Circuit Court of the county in which the office of the board is located, in accordance with KRS Chapter 13B.

Effective: July 15, 1996 History: Amended 1996 Ky. Acts ch. 318, sec. 303, effective July 15, 1996. -- Amended 1980 Ky. Acts ch. 114, sec. 92, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 315, sec. 70. -- Created 1962 Ky. Acts ch. 251, sec. 13.

330.170 Duration and effect of revocation of license.

- (1) Any licensee who has had his license revoked shall not be issued another license for a period of five (5) years from the date of revocation.
- (2) The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his employment by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within thirty (30) days.

Effective: July 14, 1992 History: Amended 1992 Ky. Acts ch. 344, sec. 13, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 12, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 80, sec. 5, effective June 17, 1978. -- Created 1962 Ky. Acts ch. 251, sec. 17.

330.180 Seal -- Records, as evidence, public.

The board shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original. Public inspection of all records kept in the office of the board under the authority of this chapter shall be as permitted by applicable provisions relating to open records, and under guidelines as shall be prescribed by the board pursuant to those provisions.

Effective: July 13, 1990 History: Amended 1990 Ky. Acts ch. 170, sec. 13, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 18.

330.190 Proof of license required to recover fees by court action -- No right of recovery by apprentice auctioneer, exception.

- (1) No person, engaged in the business of or acting in the capacity of any licensee under this chapter shall bring or maintain any action in the courts of the Commonwealth for the collection of compensation for any services performed as such a licensee without first alleging and proving that he was duly licensed at the time the alleged cause of action arose.
- (2) No apprentice auctioneer shall have the right to institute a suit in his own name for the recovery of a commission, fee, or compensation for services as an apprentice auctioneer, but any such act shall be instituted and brought by the licensed auctioneer employing an apprentice auctioneer; provided, however, that this subsection shall not be construed so as to prevent a licensed apprentice auctioneer from suing his employing auctioneer for any compensation, fees, or commissions due him from an auctioneer.

Effective: July 14, 1992 History: Amended 1992 Ky. Acts ch. 344, sec. 14, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 14, effective July 13, 1990. -- Created 1962 Ky. Acts ch. 251, sec. 19.

330.192 Auctioneer's education, research, and recovery fund -- Annual charges and assessments -- Purpose -- Use -- Coverage of licensees.

- (1) (a) There is hereby created and established in the State Treasury the auctioneer's education, research, and recovery fund.
(b) In addition to the license fees provided for in KRS 330.070, upon renewal of every license issued pursuant to this chapter, the board shall charge every licensee an amount not to exceed thirty dollars (\$30) per year to be included in the auctioneer's education, research, and recovery fund. Every original applicant for apprentice or auctioneer's license, and every applicant for an auction house operator's license on and after July 15, 1982, shall likewise submit to the board an additional fee of thirty dollars (\$30) to be deposited in the auctioneer's education, research, and recovery fund and shall also be subjected thereafter to an annual renewal fee as of the regular renewal date.
(c) In addition to the license fees provided for in KRS 330.070, the board, based upon its own discretion as to need, may assess each licensee upon renewal an amount equal to or less than thirty dollars (\$30) per year, or nothing, but not more. Each original applicant shall pay the original amount of thirty dollars (\$30), but upon renewal shall pay the same fee as other licensees.
- (2) The purposes of the auctioneer's education, research, and recovery fund shall be as follows: (a) When a licensee has been duly found guilty of violating any one (1) or more of the provisions of KRS 330.110, or any one (1) or more of the administrative regulations duly promulgated by the board, and upon the conclusion of a final order entered by the board or by the courts, if appealed, the board is

authorized to pay to the aggrieved person or persons an aggregate amount not to exceed fifty thousand dollars (\$50,000) against any one (1) licensee, provided that the licensee has refused to pay such claim within a period of twenty (20) days of entry of a final order and provided further that the amount or amounts of money in question are certain and liquidated.

(b) The board shall maintain a minimum level of five hundred thousand dollars (\$500,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the State Employees' Retirement System and the interest from said investments shall be deposited to the credit of the research and recovery fund, or, in the discretion of the board, to the agency fund account as set out in KRS 330.050(6). Sufficient liquidity, however, will be maintained so that there will be money available to satisfy any and all claims which may be processed through the board by means of administrative hearing as outlined in this chapter.

(c) The board, in its discretion, may use any funds in excess of the five hundred thousand dollar (\$500,000) level, regardless of whether it is from the auctioneer's education, research, and recovery fund fees or accrued interest thereon, for any of the following purposes:

- (1) To carry out the advancement of education and research in the auction field for the benefit of those licensed under the provisions of this chapter and the improvement and making even more efficient the auction industry as such;
 - (2) To underwrite educational seminars, caravans, and other forms of educational projects for the use and benefit generally of auctioneer licensees;
 - (3) To establish an auction chair or courses at Kentucky state institutions of higher learning for the purpose of making such courses available to licensees and the general public who may seek same on a college or university level;
 - (4) To contract for a particular research project in the auction field for the Commonwealth of Kentucky;
 - (5) To sponsor, contract for, and to underwrite any and all other educational and research projects of a similar nature having to do with the advancement of the auction field in Kentucky;
 - (6) To cooperate with associations of auctioneers and any other groups for the enlightenment and advancement of the auctioneer licensees of Kentucky; and
 - (7) To increase the level of the auctioneer's education, research, and recovery fund above five hundred thousand dollars (\$500,000);
 - (8) To augment the regular trust and agency account of the board.
- (3) (a) In the event that a licensee is found guilty of one (1) or more provisions of KRS 330.110 or of violating one (1) or more of the administrative regulations of the board, and if the amount of the money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by a Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.
- (b) If such an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall make a finding as to the monetary damages growing out of the aforesaid violation or violations.
- (c) When a final order has been entered by the Circuit Court, Court of Appeals, or Supreme Court, and upon certification to the board, the aggrieved party or parties shall be paid such amount or amounts in the aggregate not to exceed fifty thousand dollars (\$50,000) by the board, and the license held by the licensee against whom the claim was made by the aggrieved party shall be suspended at least until such time as the licensee has reimbursed the auctioneer's education, research, and recovery fund for all amounts paid to the aggrieved party due to the violation of the licensee.
- (d) When, upon the final order of the court, the board has paid from the auctioneer's education, research, and recovery fund any sum to the aggrieved party, the board shall be subrogated to all of the rights of the aggrieved party to the extent of the payment and the aggrieved party shall, to the extent of the payment, assign his right, title, and interest in the judgment to the commission.
- (e) Any funds in excess of the five hundred thousand dollar (\$500,000) level and which are not being currently used, may be invested and reinvested as set forth in subsection (2)(b) of this section, or, in the discretion of the board, may be utilized for any of the purposes enumerated in subsection (2)(c) of this section.
- (f) All the claims for monetary damages or relief from the auctioneer's education, research, and recovery fund must be made in writing on a proof of loss form submitted to the board within six (6) months of the act of the auctioneer giving rise to the loss. Failure to file such claims within the six (6) month period shall bar the claim. Additional evidence will be submitted by the claimant if required by the board.

(g) Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than fifty thousand dollars (\$50,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, and no matter what the number of claimants be or the size of such claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.

(h) No claims shall be approved under this section for amounts which, in the aggregate, exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.

- (4) All categories of licensees under this chapter are covered under the provisions of this section for the benefit and protection of the public.
- (5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including, but not limited to, the remedy of obtaining a judgment by all diligent and appropriate means.

Effective: July 15, 1998 History: Amended 1998 Ky. Acts ch. 285, sec. 9, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 344, sec. 15, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 15, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 407, sec. 9, effective July 13, 1984. -- Created 1982 Ky. Acts ch. 79, sec. 5, effective July 15, 1982.

330.200 Municipal right to license auctioneers and auction house operators.

No municipality or other political subdivision shall regulate, tax, or license any licensee except for those administrative regulations, taxes, or licenses which may be reasonably imposed or required among all persons engaged in business generally.

Effective: July 14, 1992 History: Amended 1992 Ky. Acts ch. 344, sec. 16, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 170, sec. 16, effective July 13, 1990. -- Amended 1978 Ky. Acts ch. 80, sec. 6, effective June 17, 1978. -- Created 1962 Ky. Acts ch. 251, sec. 20.

330.210 Sale of horses by auction.

Notwithstanding any contrary provisions of law and in furtherance of the policies set forth in KRS 355.2-328, at any auction sale of horses, the auctioneer:

- (1) May receive bids from the seller, consignor, or his agent, disclosed or undisclosed, if notice has been given in the terms and conditions governing the sale, or otherwise, that liberty for such bidding has been reserved by seller;
- (2) Shall conduct the sale with respect to each lot or parcel on a with-reserve basis unless the seller has authorized the auctioneer, in writing, to conduct the sale on a without-reserve basis, in which event the auctioneer shall announce, in explicit terms, that the goods are being sold without reserve; and
- (3) Shall not be required to announce at any with-reserve sale when the reserve is attained.

Effective: July 13, 1990 History: Created 1990 Ky. Acts ch. 361, sec. 1, effective July 13, 1990.

330.220 "Absolute auction" defined -- "Reserve auction" defined -- Bids by seller.

- (1) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any goods at absolute auction unless:

(a) There are no liens or encumbrances on the goods, except current tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefore, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefore, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and

(b) There is the bona fide intention at the time of the advertising and at the time of the auction sale, to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the high bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods would not be transferred to the high bidder; and

(c) The auction listing contract contains a binding requirement that the sale be conducted without reserve, by specific inclusion of an acknowledgment by the seller that the seller, or anyone acting

upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.

(2) Compliance with subsection (1) of this section shall not prohibit:

(a) A secured party or other lienholder who is not the seller from bidding at an absolute auction sale, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or

(b) Any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution; or

(c) The inclusion of nonmisleading advertising of certain goods to be sold at "absolute auction" and the nonmisleading advertising of certain goods to be sold at auction with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent through equal or appropriate emphasis, which goods are being sold by each method.

(3) Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the goods are in explicit terms put up at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the goods may be put up subject to the seller's confirmation or subject to a certain reserve price.

(4) (a) The provisions of this chapter shall not prohibit any licensee from bona fide bidding on his own behalf at any auction sale, whether absolute or with reserve, provided that his option to do so shall have been fully disclosed, including disclosure to the seller.

(b) Except as provided in subsection (2) of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his behalf. No licensee shall knowingly receive such a bid by or on behalf of the seller at an absolute auction.

(c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has been made that liberty for such bidding is retained. No licensee shall knowingly receive such a bid in the absence of full disclosure.

(d) There shall be no requirement at a with reserve sale that the reserve be announced when it is attained.

Effective: July 14, 1992 History: Amended 1992 Ky. Acts ch. 344, sec. 17, effective July 14, 1992. – Created 1990 Ky. Acts ch. 170, sec. 10, effective July 13, 1990.

330.990 Penalties.

Any person who willfully violates any provision of KRS Chapter 330 or any rule or regulation promulgated in accordance with KRS Chapter 330 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for a term not to exceed ninety (90) days, or both.

Effective: June 17, 1978 History: Amended 1978 Ky. Acts ch. 80, sec. 7, effective June 17, 1978. – Created 1962 Ky. Acts ch. 251, sec. 21.

KENTUCKY ADMINISTRATIVE REGULATIONS

201 KAR 3:005. Name required on advertising.

RELATES TO: KRS 330.100, 330.110(11)

STATUTORY AUTHORITY: KRS Chapter 13A, 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: To protect the public and to require disclosures of the auctioneer conducting a sale.

Section 1. Any advertisements pertaining to a particular auction sale must contain the name of the principal auctioneer and indicate that he is an auctioneer. (2 Ky.R. 127; eff. 10-8-75; Am. 5 Ky.R. 674; eff. 6-6-79; 11 Ky.R. 1436; eff. 5-14-85.)

201 KAR 3:015. Experience requirements for principal auctioneers.

RELATES TO: KRS 330.070(1)

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: To define the experience requirements for an apprentice auctioneer before he is eligible to take the examination to become a principal auctioneer.

Section 1. Upon application for a principal auctioneer's license, each apprentice auctioneer must present a statement signed by his principal auctioneer stating that said apprentice has participated as bid caller in at least ten (10) auction sales during the twelve (12) months prior to submitting the application. (2 Ky.R. 127; eff. 10-8-75; Am. 11 Ky.R. 1437; eff. 5-14-85.)

201 KAR 3:025. Reciprocity requirements.

RELATES TO: KRS 330.095

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: To define the requirements for a reciprocity license with another state which does not have an apprenticeship requirement for licensees.

Section 1. Due to the fact that some states do not require licensees to serve an apprenticeship, reciprocity with any state that does not require an apprenticeship shall be granted only after a licensee in that state who is a nonresident of Kentucky has held his license for a minimum of one (1) year. (2 Ky.R. 127; eff. 10-8-75.)

201 KAR 3:035. Real estate sales by auction.

RELATES TO: KRS 330.020(2)

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: To define the interaction of the real estate licensing statutes and the auctioneer licensing statutes as they relate to persons holding one license or the other but not both.

Section 1. Pursuant to an Opinion of the Attorney General, OAG-759, dated October 20, 1965, which held that a licensed real estate broker may not sell real estate at auction without an auctioneer's license; and a licensed auctioneer may not sell real estate at auction without a real estate broker's license, it shall be considered improper dealing for an auctioneer to engage in any practice to obtain or negotiate a contract for the sale of real estate at auction, or advertise, or conduct a sale of real estate at auction without a license issued by the Kentucky State Real Estate Commission. However, nothing contained in this administrative regulation shall prevent a licensed real estate broker and a licensed auctioneer from participating jointly in such transactions for the sale of real estate at auction. (5 Ky.R. 694; eff. 6-6-79.)

201 KAR 3:045. Recordkeeping and accounting.

RELATES TO: KRS 330.110(5)

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: To protect the public through adequate recordkeeping and accounting.

Section 1. (1) Any principal or apprentice auctioneer licensed by the Kentucky Board of Auctioneers shall be required to provide a receipt or receipts to all individuals or businesses placing merchandise with him for sale by him at auction. Every apprentice and principal auctioneer shall keep a copy of each receipt given for merchandise as provided herein, and shall give a true copy of said receipts to the owner of the property accepted for sale at auction.

(2) A principal auctioneer shall further render an accounting and settlement with the seller of any property sold at auction within thirty (30) days after the conclusion of such sale unless there is a legal requirement that funds held in escrow by that principal auctioneer be held longer than said thirty (30) days. (5 Ky.R. 695; eff. 6-6-79.)

201 KAR 3:055. Apprenticeship residency requirements.

RELATES TO: KRS 330.070(1)

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: To insure a bona fide apprenticeship.

Section 1. In the absence of a showing of special circumstances satisfactory to the board, no principal auctioneer shall sponsor an apprentice whose residence is located outside a fifty (50) mile radius of the principal auctioneer's main or branch office. (5 Ky.R. 695; eff. 6-6-79.)

201 KAR 3:065. Maintaining a license while on active military duty.

RELATES TO: KRS 330.060(4)

STATUTORY AUTHORITY: KRS 330.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: To comply with the Sailor and Soldier Relief Act and prevent unwarranted penalty to a person serving in the armed forces.

Section 1. Any individual holding a valid apprentice or principal Kentucky auctioneer license who enters the military service of the United States shall not be required to contribute to the Auctioneer Education Research and Recovery Fund or maintain his license during the period that he is on active duty for said military service. Within sixty (60) days of such individual's honorable discharge from the service, he may request reinstatement of his license and said request shall be granted by the board. (12 Ky.R. 86; eff. 8-13-85.)